# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.209 of 2007

Date of decision : December 14, 2010

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Sikander Kumar ...Petitioner.

Versus

Union of India and others ...Respondents.

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*Coram*

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Petitioner : M/s Surender Sharma, Paresh Sharma and Shivank Singh Panta, Advocates.

For the Respondents : Mr. Sandeep Sharma, Assistant Solicitor General, with Ms Anita Dogra, Central Government Counsel.

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Surjit Singh, Judge(Oral)

Petitioner joined as Constable in Indo-Tibetan Border Police Force on 1st June, 1989. He was promoted as Head Constable in October, 1997. On 9th September, 2001, when he was posted at Leh, he was sent on tour to Shivpuri in Madhya Pradesh, for reconciliation of some differences in the arms and ammunition supplied to the Unit, he was attached with. After doing the aforesaid job of reconciliation, he was supposed to have joined back at Leh, where his Unit was located those days. He was given movement order to report back at Leh, after reconciliation job was over. As per that order, he was supposed to reach Leh and to report for duty on 19th October, 2001. He did not reach Leh on time nor did he send any intimation about his absence to the Commandant of his Unit. He reported for

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Whether reporters of the local papers may be allowed to see the judgment?

duty on 21st January 2002, after having remained absent from duty for 124 days. .

***2.*** Petitioner was charge-sheeted for the aforesaid willful absence from duty, which was treated as desertion and tried by Summary Force Court, constituted under the provisions of Indo-Tibetan Border Police Force Act, 1992. He was held guilty and awarded punishment of removal from service. Order of punishment was passed on 21st December, 2002, with effect from 21st February, 2002, copy Annexure PH. According to the petitioner copy of punishment order was supplied to him in August, 2004. That according to him was not legible. He, therefore, approached his employer for supply of legible copy of order. Thereafter, in February, 2006, he submitted a petition to the Government of India, assailing the order of punishment. Copy of that petition is Annexure PK. According to the petitioner, no order on this petition has been passed by the Government of India. He has prayed for quashing the order of his removal from service and also Summary Force Court proceedings, besides seeking issuance of a writ of mandamus, directing the respondents to reinstate him, with all consequential benefits, like pay, promotion, etc.

***3.*** Respondents, in their reply, have stated that the petitioner remained absent from duty for 124 days, without any intimation to his Commandant and that when, after waiting for resumption of duty by the petitioner for a few days, nothing was heard about him, an FIR was lodged with

the Superintendent of Police, Kangra, a District in Himachal Pradesh, from where the petitioner hails, and it was then that he reported for duty in February, 2002. It is also stated that earlier also the petitioner had remained absent from duty or overstayed sanctioned leave thrice, for which he had been visited with minor penalties, but despite such punishments he did not mend his ways.

***4.*** I have heard learned counsel for the petitioner as also learned Assistant Solicitor General of India and gone through the record.

***5.*** Facts about the absence of the petitioner and the manner in which he absented himself from duty speak volumes about the gravity of misconduct of the petitioner. These are the facts narrated by the petitioner himself in his petition. He says that his wife had fallen sick, when he was returning from Madhya Pradesh and because of that he could not join his duty at Leh. According to him, he had informed his Commandant, telegraphically, but he lost the postal receipt, which was handed over to him by the Post Office people. Had he really sent the telegram, its evidence was supposed to be available in the Post Office concerned. He made no effort to summon record from the Post Office, during the course of proceedings before the Summary Force Court. Therefore, he is liable to an adverse inference that no intimation was sent by him to his Commandant.

***6.*** As regards the plea that petition Annexure PK submitted to the Central Government has not been decided

so far, respondents have stated that the petition had been rejected and decision conveyed to the petitioner, vide letter No.SAO (Pers-II) Directorate General, ITBPF Order No.105 dated 4th September, 2006.

***7.*** Petitioner was posted at Leh, bordering Tibet, in those days. He was employed with Para-Military Force, which is supposed to be a highly disciplined force. His absence from duty, for a long period of 124 days, and that too when he was posted at the International Border, is a very serious offence, which according to the provisions of the Indo-Tibetan Border Police Force Act, 1992, is punishable with imprisonment, extendable to seven years. In addition to that penalty of dismissal from service can also be imposed, for the kind of offence committed by him. He should be thankful that he has been let off with the punishment of removal from service only.

For the foregoing reasons, writ petition is dismissed.

**December 14, 2010**(sd) **( Surjit Singh ), J**